Supreme Court, U. S.
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Supreme Court of the United States

October Term, 1975
No. 75-565

PLAIN DEALER PUBLISHING CO.,
Petitioner,

vs.

CLEVELAND TYPOGRAPHICAL UNION NO. 53, *et al.*,
Respondents.

PETITION FOR WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit

JAMES P. GARNER
DON H. PACE
ELLIOT S. AZOFF
1956 Union Commerce Building
Cleveland, Ohio 44115
Attorneys for Petitioner

BAKER, HOSTETLER & PATTERSON
Of Counsel

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-5647

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Supreme Court of the United States

October Term, 1975

No. _____

PLAIN DEALER PUBLISHING CO.,

Petitioner,

vs.

CLEVELAND TYPOGRAPHICAL UNION No. 53; HAVEN COMBS as President; WILLIAM WITHERS as Vice-President; NORMAN GLENN as Secretary-Treasurer of Cleveland Typographical Union No. 53;

CLEVELAND STEREOTYPERS UNION, No. 22; JOSEPH VAVRUS as President; EDWARD H. POTRAFFKE as Vice-President; TERREANCE MACDONALD as Secretary-Treasurer of Cleveland Stereotypers Union, No. 22;

CLEVELAND MAILERS UNION, No. 12; HERBERT MCTAGGART as President; FRANK DEROSE as Vice-President; EARL BECKETT as Secretary-Treasurer of Cleveland Mailers' Union, No. 12;

CLEVELAND NEWSPAPER PRINTING PRESSMEN'S UNION No. 5; RALPH HANNA as President; ROBERT MAPES as Vice-President; ADOLPH LEGERSKI as Secretary-Treasurer of Cleveland Newspaper Printing Pressmen's Union No. 5;

Respondents.

PETITION FOR WRIT OF CERTIORARI
To the United States Court of Appeals For the Sixth Circuit

Petitioner, Plain Dealer Publishing Co., respectfully prays that a writ of certiorari issue to review the opinion of the United States Court of Appeals for the Sixth Circuit entered in this case on August 15, 1975.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit, not yet officially reported, appears unofficially at 90 LRRM 2110. It is appended at App. A, pp. 17-19, *infra*. The opinion of the United States District Court for the Northern District of Ohio, not yet officially reported, appears unofficially at 88 LRRM 2155. It is appended at App. B, pp. 20-41, *infra*.

JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on August 15, 1975. This Court has jurisdiction under 28 U.S.C. §1254(1).

QUESTION PRESENTED

If an employer enters into binding collective bargaining agreements with four unions representing various employee bargaining units within its plant that contain broad mandatory arbitration procedures, an obligation on the part of the unions in absolute terms to supply the manpower needs of the employer and in two cases specific clauses limiting observance of picket lines of other Unions and these unions engage in a work stoppage in deference to a fifth union's lawful picket line, does a federal district court have jurisdiction under section 301 of the Labor-Management Relations Act, notwithstanding section 104 of the Norris-LaGuardia Act, to enjoin the unions' sympathy strike conduct and to compel arbitration as to whether the unions' conduct violates their respective collective bargaining agreements?

STATUTES INVOLVED

This case involves section 4 of the Norris-LaGuardia Act, 47 Stat. 70, 29 U.S.C. §104 and section 301(a) of the Labor-Management Relations Act of 1947, 61 Stat. 156, 29 U.S.C. §185(a). These provisions are appended at App. C, pp. 42-43, *infra*.

STATEMENT OF THE CASE

1. Federal Jurisdiction

This case arose when the Plain Dealer Publishing Co. (Plain Dealer), petitioner, pursuant to section 301 of the Labor-Management Relations Act, 29 U.S.C. §185(a), filed an action against four craft unions which represent various groups of its employees, Cleveland Typographical Union No. 53 (Typographers), Cleveland Mailers Union No. 12 (Mailers), Cleveland Stereotypers Union No. 12 (Stereotypers) and Cleveland Newspaper Printing Pressmen's Union No. 5 (Pressmen). The complaint sought a temporary restraining order, preliminary and permanent injunctive relief against the defendant unions ordering them to fulfill their contractual obligations to

(1) submit existing disputes to the contractually specified grievance procedure culminating in final and binding arbitration; and

(2) supply the contractually required manpower needs of the employer pending resolution of the dispute by arbitration.

2. Statement of Facts

The Plain Dealer publishes a daily and Sunday morning newspaper that is distributed throughout northeastern Ohio. The Typographers, Mailers, Stereotypers and Pressmen represent craft employees in mechanical departments of the Plain Dealer and each has a separate collective bargaining agreement. The Cleveland Newspaper Guild No. 13 (Guild) is the collective bargaining representative of the Plain Dealer editorial employees.

The Plain Dealer's contract with the Guild expired at midnight October 31, 1974; and the Guild commenced an economic strike, establishing picket lines around the Plain Dealer building in the early hours of the morning of November 1, 1974. Initially, the Guild engaged in typical mass picketing. The Plain Dealer filed an action for injunctive relief in the Cuyahoga County Court of Common Pleas and obtained an order Friday afternoon limiting the number of pickets permitted and prohibiting interference with the rights of others. The Guild leadership knew of the order immediately, and the restraining order was served on those on the picket line in the normal course.

Each of the four craft unions who were named defendants in this action were requested by the Plain Dealer management to fulfill their contractual obligations to supply the Plain Dealer's manpower needs in accordance with the markup and foreman's instructions and in the alternative to process the matter through the grievance-arbitration machinery. They all have consistently maintained that they do not have such an obligation and that the district court had no jurisdiction to grant the Plain Dealer's request that the unions be ordered to fulfill their obligations and arbitrate the question, and that they had the right to honor the Guild picket line.

The Typographers and Stereotypers took the further position on Saturday, November 2, 1974, that they were attempting to report to work but were prevented from doing so by repeated incidents of violence. The two unions made two alleged attempts, one on November 2 and one on November 3, to report to work after the service of the injunction on November 2. These were the only efforts these unions made until the strike ended on December 23, 1974.

During the period relevant to this dispute, the Plain Dealer had collective bargaining agreement with each of the four craft union defendants. These agreements obligated the four unions to supply the manpower needs of the Plain Dealer (See App. D, pp. 44, 46, 48, 50, *infra*).

Each of the four collective bargaining agreements contain broad arbitration agreements. The contracts with the Typographers and Mailers provide settlement through conciliation and then final binding arbitration of "all differences that may arise" (See App. D, pp. 45, 46, *infra*). The scope of the grievance machinery with the Pressmen extends to "any difference of dispute arising as to the interpretation or the operation of this Agreement." (See App. D, p. 48, *infra*), and, with the Stereotypers "[a]ny dispute or complaint arising out of the interpretation or application of the terms of this agreement" (See App. D, p. 50, *infra*).

Finally, the collective bargaining agreements with the Typographers and Mailers contain specific picket line clauses. "No employe covered by this contract shall be required to cross a picket line established because of an authorized strike by any other subordinate Union of the International Typographical Union" (See App. D, pp. 44, 48). The Guild, which had established the picket line, is not

such a subordinate union. Both the Pressmen and Stereotypers contracts contain clauses providing that during the pendency of arbitration, work as scheduled by the Publisher shall proceed without interruption (See App. D, pp. 49, 50).

3. The Proceedings Below

The Plain Dealer appealed the district court's denial of injunctive relief. On August 15, 1975, the United States Court of Appeals for the Sixth Circuit affirmed the order of the district court, which decision is appended at App. A, pp. 17-19, *infra*. The Court of Appeals dealt with a single threshold issue—"whether the exception to the anti-injunction provision of the Norris-LaGuardia Act, 29 U.S.C. §104, carved out in *Boys Markets, Inc. v. Retail Clerks Union Local 770*, 398 U.S. 235 (1970), permits an injunction against unions engaged in a work stoppage in deference to another union's lawful picket line." It held that it did not for the reasons set forth in *Buffalo Forge Co. v. United Steelworkers*, ... F.2d ....., 89 LRRM 2303 (2nd Cir. 1975), and in the district court opinion below, appended at App. B, pp. 20-41, *infra*. It is on this narrow but important issue that petitioner seeks that writ of certiorari issue for review by this Court.

REASONS FOR GRANTING THE WRIT

1. The Decision Below Conflicts in Principle With the Federal Labor Policy Articulated by This Court in the Steelworkers Trilogy and Boys Markets v. Retail Clerks Union Accommodating Section 301 of the LMRA and Section 4 of the Norris-LaGuardia Act.

The court below held that in light of the anti-injunction provision of the Norris-LaGuardia Act, 29 U.S.C. §104, the district court was without jurisdiction to grant the requested injunctive relief, that is to order arbitration and enjoin the refusal to supply manpower needs, against unions engaged in a work stoppage in deference to another union's lawful picket line. This approach is at odds with the clear congressional policy[1] of promoting the peaceful settlement of labor disputes through arbitration that has been nurtured by the federal judiciary in the *Steelworkers Trilogy*[2] and its progeny. Since the *Steelworkers Trilogy*, this Court has been fashioning federal labor law so as to establish arbitration as the linchpin of its policy.

The inexorable development of this policy culminated in *Boys Markets, Inc. v. Retail Clerks Union*, 398 U.S. 235 (1970), where this Court accommodated the terms of section 4 of the Norris-LaGuardia Act (1932) to the subsequently enacted provisions of section 301(a) of the

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1. Section 203(d) of the Labor Management Relations Act, 1947, 29 U.S.C. §173(d) declares:

> Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement.

2. *United Steelworkers v. American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U.S. 574 (1960); *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

Labor Management Relations Act, 1947 and the purposes of arbitration. The Court reviewed the history of unionism and determined that the Norris-LaGuardia Act was directed "to a situation different from that which exists today." *Id.* at 250. Labor unions were no longer struggling entities but had become an important segment of modern industrial society. The interaction between labor and management—collective bargaining—was exalted as the key to industrial peace; and its product, the collective bargaining agreement was the compact for joint rule. But, in order to develop meaningful collective bargaining relationships, this Court in *Boys Markets* recognized that it was necessary to render work stoppages in violation of collective bargaining agreements enjoinable. If the parties agree to resolve disputes by final and binding arbitration, as opposed to resorting to self-help, then that agreement was to be specifically enforceable in federal courts. Only in this way would industrial peace be promoted.

Indeed, the wording of the Norris-LaGuardia Act itself reveals that its core purpose was to eliminate jurisdiction of the federal courts over lawful strikes in labor disputes. Injunctions are still appropriate "when unlawful acts have been threatened . . . or have been committed . . .",[3] and this Court has said that the Norris-LaGuardia Act is not to be read literally but rather constitutes a single facet of an overall substantive federal labor policy to be created by the federal judiciary. *Textile Workers Union v. Lincoln Mills,* 353 U.S. 448, 456-57 (1957), *Teamsters, Local 174 v. Lucas Flour Co.,* 369 U.S. 95, 103 (1962).

This Court has further set as the first and foremost condition for granting injunctive relief against a strike or work stoppage that there be a dispute involving a matter

3. 29 U.S.C. §107.

within the parameters of a grievance procedure which the parties are contractually obligated to follow:

Thus, a court must make an examination of arbitrability—of whether the grievance procedure of the parties encompasses the particular dispute.

A court does not proceed to analyze arbitrability in a vacuum, and is not without Supreme Court guidelines. In *United Steelworkers v. Warrior & Gulf Nav. Co., supra,* this Court concluded that because of the importance attached to the peaceful settlement of labor disputes and the desirability of settling such disputes through the informed judgment of one familiar with the "common law of the shop," courts should indulge in a strong presumption of arbitrability:

> An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. *Doubts should be resolved in favor of coverage.* (363 U.S. at 582-83; emphasis supplied.)
>
> In the absence of any express provision excluding a particular grievance from arbitration, we think only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail. . . (363 U.S. at 584-85.)

As long as a dispute is arbitrable, no injustice occurs when a court orders arbitration and issues an injunction since both parties will have their claims determined by the tribunal which they have agreed was most competent and appropriate to interpret the provisions of the collective agreement. 398 U.S. at 253 n. 22. Thus, the accommodation between section 301 and Norris-LaGuardia was established:

if a court applying the proper standard determines a dispute to be arbitrable, it is to order arbitration and issue injunctive relief.

The unions have agreed to supply the employer's manpower need. The Typographers and Mailers agreed that only when confronted by ITU picket lines would the obligation to perform available work be vitiated. Additionally, the Pressmen and Stereotypers have expressly agreed that there will be no interruption process since the disputes are arbitrable. And, they have agreed to submit disputes over these clauses to arbitration. Federal labor policy dictates that a contractual commitment to submit a dispute for final and binding arbitration gives rise to an implied no-strike obligation over the matter. This was stated only recently in *Gateway Coal Co. v. U.M.W.*, 414 U.S. 368 (1974):

> [A] contractual commitment to submit disagreements to final and binding arbitration gives rise to an implied obligation not to strike over such disputes. Indeed, the strong federal policy favoring arbitration of labor disputes was the linchpin of this Court's reasoning in *Boys Markets*. Denial of all equitable relief for breaches of no-strike obligations would have carried "devastating implications for the enforceability of arbitration agreements." *Id.* at 381-382.

In essence the issues of arbitrability and implication of a no-strike obligation are inextricably intertwined. If a dispute is subject to the grievance procedure, resort to strike or work stoppage is prohibited. For the employer's agreement to resolve a particular dispute through a mandatory grievance-arbitration procedure, the union has impliedly promised not to strike over the issue—a promise enforceable under *Boys Markets*. The emphasis

to be placed on this rationale was articulated by Justice Powell in *Gateway Coal Co.*, when he stated that absent an express negation of any implied no-strike obligation "the agreement to arbitrate and the duty not to strike should be construed as having coterminous application." *Id.* at 382.

The holdings of *Gateway* and *Boys Markets* are applicable to the case at bar. Under each of their collective bargaining agreements, the four unions agreed to submit all grievances to mandatory and exclusive grievance procedures leading to final and binding arbitration. All four unions agreed to supply the employer's manpower needs. As to two unions it was agreed that if confronted with pickets of a union of their International, members would be excused from performing work, otherwise failure to report or obtain a substitute is grounds for discharge. Two other unions agreed explicitly that there would be no interruption of work pending arbitration. Thus, as long as this Court, indulging in the prescribed presumption of arbitrability, finds the issues involved in this case to be subject to the mandatory arbitration provisions of the collective bargaining agreements involved, it must find that the district court had the requisite jurisdiction to grant the injunctive relief sought, to enforce the obligations and to arbitrate any disputes as to meaning.

The Sixth Circuit apparently follows the Second Circuit's narrow limitation of *Boys Markets* injunctions to strikes "over" an arbitrable dispute, rather than to all illegal strikes involving arbitrable disputes. Such reliance on semantics not only elevates form over substance, but ignores the fact that a sympathy strike presupposes that the union's view of its manpower-supply duties is contrary to the company's view, thereby necessarily raising a strike issue "over" an arbitrable dispute.

All apparently agree that the Unions have some duty to supply men upon request of the company, and that the Unions' refusal to do so raises an arbitrable dispute. Is this dispute less arbitrable and hence not enjoinable because the Union's intention is to aid another striking Union? Contrary to the Sixth Circuit, The Plain Dealer respectfully submits that irrespective of the Union's contentions the contract dispute is arbitrable; and once this is acknowledged, *Boys Markets* and *Steelworkers Trilogy* together compel the issuance of injunctive relief.

What if one day a union caused a work stoppage by refusing to supply men but refused to disclose a reason? Under such a circumstance the work stoppage would not be "over an arbitrable grievance." Nonetheless, Petitioner Plain Dealer would contend *Boys Markets* would mandate injunctive relief be granted. A union conceivably might refuse to supply men in protest against the Plain Dealer's editorial policy or in support of an unlawful wildcat strike of another union. *Boys Markets* should apply to each of these situations despite the fact that the work stoppage was not "over an arbitrable grievance." In each of these cases the refusal to supply men is an arbitrable dispute which can be resolved through arbitration.

The fact that arbitration will not resolve the dispute between the Guild and Plain Dealer is totally irrelevant. Arbitration *will* resolve the dispute between the four defendant unions and the Plain Dealer, and it is such peaceful resolution of disputes that *Boys Markets* and the *Steelworkers Trilogy* was intended to foster.

A strike by the union may spawn disputes between the employer and other unions. When craft employees failed to report to work because of Guild picket lines in violation of the express contractual obligations to supply the Plain Dealer's manpower needs, a dispute arose. The

duty of the district court is to determine if a disagreement on contractual terms is arguably arbitrable. If the matter cannot be said with positive assurance not to be arbitrable, the court, under *Boys Markets* is to order arbitration. As a concomitant of arbitration, the court must enforce the no strike pledge which is the *quid pro quo* for arbitration. Otherwise, the employer does not get the benefit of his bargain, loses all impetus for agreeing to arbitration and the basis of peaceful industrial society is eroded.

2. The Decision Below Presents an Important Question of Statutory and Federal Labor Policy on Which Court of Appeals Are in Direct Conflict.

The issue presented here, namely, whether a federal district court possess authority to enjoin a union engaged in a work stoppage in deference to another union's lawful picket line, has caused division among the circuit court of appeals. Three circuit courts have adopted a view contrary to the decision of the Sixth Circuit. The Third Circuit in *NAPA Pittsburgh, Inc. v. Automotive Chauffeurs Local 926*, 502 F.2d 321 (3rd Cir.) (en banc), *cert. denied* 95 S. Ct. 625 (1974) and *Island Creek Coal Co. v. United Mine Workers*, 507 F.2d 650 (3rd Cir. 1975); the Fourth Circuit in *Monongahela Power Co. v. Local 2332, IBEW*, 484 F.2d 1209 (4th Cir. 1973), *Pilot Freight Carriers, Inc. v. Teamsters*, 497 F.2d 311 (4th Cir.), *cert. denied* 419 U.S. 869 (1974), *Wilmington Shipping Co. v. Longshoremen*, ... F.2d ....., 86 LRRM 2846 (4th Cir.), *cert. denied* 95 S. Ct. 498 (1974), *Armco Steel Corp. v. United Mine Workers*, 505 F.2d 1124 (4th Cir. 1974); and the Eighth Circuit in *Valmac Industries, Inc. v. Food Handlers Local 425*, ... F.2d ....., 89 LRRM 3073 (8th Cir., July 29, 1975) and *Associated General Contractors of Minn. v. Construction & General Laborers Local No. 563*, ... F.2d ....., 89 LRRM 3077 (8th Cir. July 29, 1975) have

all held that in a variety of situations a federal district court has jurisdiction to enjoin such a work stoppage where the work stoppage itself was the question to be arbitrated. These courts have stressed the dominant policy favoring the peaceful settlement of labor disputes by final and binding arbitration. They have suggested that to limit the scope of *Boys Markets* to grievances entirely independent of the underlying work stoppage would leave an employer helpless to compel a union to fulfill its contractual commitments and to arbitrate rather than strike.

Two circuits have agreed with the Sixth Circuit that the work stoppage must be one which is "*over* a grievance which both parties are contractually bound to arbitrate" and hence, there is no jurisdiction to enjoin a work stoppage in deference to another union's lawful picket line. These circuits are the Fifth Circuit in *Amstar Corp. v. Amalgamated Meat Cutters*, 468 F.2d 1372 (5th Cir. 1972) and the Second Circuit, relied on by the Sixth Circuit, in *Buffalo Forge Co. v. United Steelworkers*, ... F.2d ....., 89 LRRM 2303 (2nd Cir. 1975).[4]

The issue presented here as stated in *Valmac Industries, Inc., supra*, at p. 3075 "has caused division in the circuits." This conflict among the circuits seriously impairs the requirement for a single uniform federal labor policy. The issue is a recurrent one, as witnessed by the fact that seven circuits have already dealt with the matter, and affects the relationship of millions of workers and their employer. There is no way that the conflicting decisions among the circuits can be reconciled and the disagreement among the circuits can be resolved only by this Court.

4. The position of the Seventh Circuit in *Inland Steel Co. v. Local 1545, United Mine Workers*, 505 F.2d 293 (7th Cir. 1974) and *Hyster Co. v. Independent Towing and Lifting Machine Assn.*, ... F.2d ....., 89 LRRM 2685 (7th Cir. 1975) is difficult to fathom.

This case is a particularly good vehicle for resolving the conflict. The four contracts involved contain all the various elements found in all the other cases: all four contracts contain a substantive provision to supply manpower needs which is inimical to striking, all four contain mandatory arbitration procedures, two contain specific no interruption of work pending arbitration clauses and two contain picket line clauses. Thus, in one case the Court may fashion guidelines that would govern the range of situations in which the problem can and has arisen.

CONCLUSION

For the reasons stated above, this petition for certiorari should be granted.

Respectfully submitted,

JAMES P. GARNER
DON H. PACE
ELLIOT S. AZOFF
Attorneys for Petitioner, Plain Dealer Publishing Company

Of Counsel:
BAKER, HOSTETLER & PATTERSON
1956 Union Commerce Building
Cleveland, Ohio 44115
(216) 621-0200

APPENDIX A

Opinion of the Court of Appeals

(Decided and Filed August 15, 1975)

No. 75-1219

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PLAIN DEALER PUBLISHING CO.,
Plaintiff-Appellant,

v.

CLEVELAND TYPOGRAPHICAL UNION, *et al.*,
Defendants-Appellees.

Before: PECK, McCREE and MILLER, Circuit Judges.

PER CURIAM. This is an appeal from the denial of an injunction requested in a dispute between the Cleveland Plain Dealer and the craft unions representing some of its employees. It requires us to decide whether the exception to the anti-injunction provision of the Norris-LaGuardia Act, 29 U.S.C. § 104, carved out in *Boys Market, Inc. v. Retail Clerks Union, Local 770*, 398 U.S. 235 (1970), permits an injunction against unions engaged in a work stoppage in deference to another union's lawful picket line. We hold that it does not.

The Cleveland Newspaper Guild, not a party to this litigation, was engaged in a lawful economic strike against the Plain Dealer in November, 1974, and members of the

defendant unions did not cross the Guild picket lines. Mass picketing and incidents of violence attended the Guild strike, and a state court order limiting the number of pickets was not totally effective. Although members of two of the four defendant unions did attempt to report for work, they were unable to enter the Plain Dealer building because of the persistent violence.

The Plain Dealer brought suit in the district court to enjoin the work stoppage by the craft unions and to force them to arbitrate the dispute. The district court, in denying the motion for injunctive relief, stated that the narrowly circumscribed injunctive relief authorized in *Boys Market* did not extend to the prohibition of work stoppages generated by lawful labor disputes; that neither the violence nor the threats of violence on the Guild picket line violated the Guild-Plain Dealer collective bargaining agreement; and that equitable considerations favored the denial of the motion for the injunction. After the district court issued its order, the United States Court of Appeals for the Second Circuit considered the issue before us. In *Buffalo Forge Co. v. United Steelworkers of America,* 43 U.S. L.W. 2506 (May 1, 1975), it determined that when members of a union not directly in conflict with an employer conduct a work stoppage out of respect for another interested union's lawful picket line, and not because of a desire to avoid arbitration, the denial of injunctive relief accords with the national labor relations policy expressed in the Norris-LaGuardia Act.

For the reasons set forth in the *Buffalo Forge* decision and for the reasons set forth in the district court's opinion, attached hereto as an appendix,* the judgment is affirmed.

*See Appendix B.

APPENDIX A (Cont'd)

Judgment of the Court of Appeals

(Decided and Filed August 15, 1975)

No. 75-1219

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PLAIN DEALER PUBLISHING CO.,
Plaintiff-Appellant,

v.

CLEVELAND TYPOGRAPHICAL UNION, *et al.*,
Defendants-Appellees.

JUDGMENT

APPEAL from the United States District Court for the Northern District of Ohio.

THIS CAUSE came on to be heard on the record from the United States District Court for the Northern District of Ohio, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

IT IS FURTHER ORDERED that the Defendants-Appellees recover from Plaintiff-Appellant the costs on appeal as itemized below and that execution therefrom issue out of said District Court if necessary.

APPENDIX B

Memorandum of the District Court

No. C74-1001

UNITED STATES DISTRICT COURT
Northern District of Ohio
EASTERN DIVISION

PLAIN DEALER PUBLISHING CO.
Plaintiff,

v.

CLEVELAND TYPOGRAPHICAL UNION No. 53, *et al.*,
Defendants.

MEMORANDUM

(Filed November 8, 1974)

GREEN, *J.*:

This action was commenced on Friday, November 1, 1974, by the Plain Dealer Publishing Co. (hereinafter Plain Dealer) against three unions and the officers thereof in their official capacities. The union defendants so named were Cleveland Typographical Union, No. 53 (hereinafter Printers), Cleveland Stereotypers Union, No. 22 (hereinafter Stereotypers), and Cleveland Mailers' Union, No. 12 (hereinafter Mailers). The complaint alleged the existence of continuing collective bargaining agreements between plaintiff and each of the said defendants, which contracts contained clauses obligating the parties thereto "to settle all differences that may arise between the parties" by conciliation or grievance procedures "and final

and binding arbitration." The complaint further alleged the existence of a dispute between plaintiff and each of the said defendants, in that each of the defendant unions had an obligation to provide workers for duty at the Plain Dealer, but that as of November 1, 1974, each of the unions:

> . . . indicating it was speaking for and on behalf of itself and its members indicated it would not supply the necessary men and cause them to report for work on their regularly scheduled shifts.

It was further alleged that the said disputes were arbitrable under the contracts, but that the defendants, nevertheless, "have caused a work stoppage in violation of the Agreement".

The relief sought under the complaint was:

1) A preliminary injunction enjoining the work stoppage.
2) A decree that the collective bargaining agreements preclude a work stoppage during their terms and that the disputes alleged were subject to arbitration thereunder.
3) A finding that defendants were in violation of the agreements by failing to cause their members to report for work.
4) A permanent injunction against the work stoppage.
5) Retention of jurisdiction to enforce the injunctive orders and for determination of damages.
6) Recovery of fees, expenses, cost and disbursements of the action.

There was presented to the Court, with the complaint, a motion for temporary restraining order. Such motion sought an order upon defendants prohibiting the continuing of "their unauthorized strike now existing at the Company's plant". When counsel for plaintiffs appeared with that request, counsel for defendant Printers was also present. The Court was advised that the factual background for the litigation was that The Cleveland Newspaper Guild Local No. 1 (hereinafter Guild), was engaged in a lawful economic strike against the Plain Dealer as of November 1, 1974, and that members of the defendant unions had not crossed the Guild picket lines which had been set up at 6:00 a.m. that morning. However, counsel for the Printers advised the Court that the failure to report for work by his clients was not voluntary, in that there was mass picketing at the Plain Dealer plant, with threats of harm and violence to anyone attempting to gain entry. Plaintiff's counsel then advised that within the hour an order had been obtained in the Common Pleas Court of Cuyahoga County limiting the number of pickets permitted and prohibiting any interference with rights of others. He conceded, however, that it was not known whether such order had yet been served and what the actual conditions were at that time.

Based upon such representations the Court advised that the requested order would not be granted, but that action would be withheld until it was determined what conditions developed at the Plain Dealer premises following service of the Common Pleas order. The Court also advised that if necessary further proceedings could be had on Saturday.

A request for a Saturday hearing was made by plaintiff's counsel, and the same was convened at about 3:00 p.m. At that time plaintiff filed an amended complaint,

adding as a party defendant the Cleveland Newspaper Printing Pressmen's Union No. 5 (hereinafter Pressmens) and the officers thereof in their official capacities. The allegations of the amended complaint as against the Pressmens were essentially the same as against the other defendants. A further motion for temporary restraining order against all defendants was presented. That proposed order was similar to the original request for temporary restraining order, but contained an added clause that:

> . . . nothing contained herein shall be construed as requiring any individual employee member of the defendant Unions who, upon attempting to enter the plaintiff's premises, is unable to do so because of real fear of bodily harm to himself from the pickets of the Cleveland Newspaper Guild Local No. 1.

Plaintiff's counsel advised that the Common Pleas order had been served shortly after 6:00 p.m. the preceding evening, that he believed it was then possible for the members of the craft unions to obtain entrance to the Plain Dealer Building, but that no members of the four defendant unions had reported for work.

Defendants' counsel, on the other hand, maintained that notwithstanding the Common Pleas order conditions at the premises were still such that the craft employees were being denied access to the plant, and that there existed a real danger to the safety of any person who might try to cross the Guild picket line.

Faced with such conflicting representations by counsel, the Court set the matter for evidentiary hearing on Monday, November 4, 1974. On Tuesday, November 5, it was agreed that the matter would be considered as a motion for preliminary injunction upon the pleadings then before the Court. Such decision was reached based upon

the extent of the record being developed and in order to afford appellate review from this Court's determination.

The hearing having been concluded, and the Court having received briefs from counsel during the progress thereof, the matter is before the Court for decision.

At the outset, it must be borne in mind that this is a motion for preliminary injunction. As such, the criteria pertinent thereto are not the same as control on a decision on the merits. The standards which this Court should apply in determining whether a preliminary injunction is proper have been set forth in *North Avondale Neighborhood Association v. Cincinnati Metropolitan Housing Authority*, 464 F. 2d 486 (CA 6, 1972), as follows:

1) Has petitioner made a strong showing of probable success at trial?

2) Has petitioner shown irreparable injury?

3) Would issuance of the preliminary injunction cause substantial harm to others?

4) Where lies the public interest?

Further, a determination made on a request to invoke the Court's equitable powers involves consideration of factors beyond those which apply to a prayer for remedies at law. It is also important to note that this is an action against the unions themselves for concerted activity, and does not involve determination of action by any particular individual involved, except insofar as such conduct bears on the question of concerted activity.

In determining whether plaintiff has made a strong showing of probable success on the merits, the Court must consider the law controlling herein, and the application of such legal principles to the evidence upon the record.

The starting point for a discussion of the legal issues raised in this case should be the Supreme Court's decision in *Boys Markets, Inc. v. Retail Clerks Union*, 398 U.S. 235 (1970). In fact, the injunction being sought by plaintiff is of a nature now commonly referred to as a "Boys Market" injunction, and has been so designated in the course of this proceeding. Before the landmark *Boys Markets* decision, federal courts could not enjoin a strike, even in breach of a no-strike contractual obligation, in any case arising from a labor dispute, because of the all-encompassing language of the anti-injunction provisions of Section 4 of the Norris-LaGuardia Act. 29 U.S.C. § 104. In *Boys Markets*, however, the Supreme Court carved out a "narrow exception" to the Norris-LaGuardia Act in order to accommodate the Act to § 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a), and the federal labor law policy which encourages arbitration as a method for settling disputes.

In *Boys Markets*, the union insisted that only its members and not supervisory personnel could rearrange merchandise in the frozen food cases of the employer's market. When the employer refused to empty the shelves stocked by non-union employees, the union went out on strike. The dispute was subject to arbitration under the collective bargaining agreement and the strike was in violation of an express no-strike clause of that agreement. The Supreme Court held that the district court had properly enjoined the strike, stating that under § 301(a) the federal courts may enjoin a strike if it is found that the "strike is sought to be enjoined because it is over a grievance which both parties are contractually bound to arbitrate . . ." and that the injunction is warranted under normal equity considerations. The Supreme Court's holding is reflected in the following portion of its opinion:

Our holding in the present case is a narrow one. We do not determine the vitality of the Norris-LaGuardia Act. We deal only with the situation in which a collective-bargaining contract contains a mandatory grievance adjustment or arbitration procedure. Nor does it follow from what we have said that injunctive relief is appropriate as a matter of course in every case of a strike over an arbitrable grievance. The dissenting opinion in Sinclair suggested the following principles for the guidance of the district courts in determining whether to grant injunctive relief—principles that we now adopt:

"A District Court entertaining an action under § 301 may not grant injunctive relief against concerted activity unless and until it decides that the case is one in which an injunction would be appropriate despite the Norris-LaGuardia Act. When a strike is sought to be enjoined because it is over a grievance which both parties are contractually bound to arbitrate, the District Court may issue no injunctive order until it first holds that the contract *does* have that effect; and the employer should be ordered to arbitrate, as a condition of his obtaining an injunction against the strike. Beyond this, the District Court must, of course, consider whether issuance of an injunction would be warranted under ordinary principles of equity—whether breaches are occurring and will continue, or have been threatened and will be committed; whether they have caused or will cause irreparable injury to the employer; and whether the employer will suffer more from the denial of an injunction than will the union from its issuance." 370 U.S., at 228, 8 L. Ed. 2d at 460. (Emphasis in original.) 398 U.S. 235, 253-254.

In *Boys Markets,* there was an express no-strike provision in the collective bargaining agreement. It was this express contractual duty which the Supreme Court held could be enforced by an injunction under § 301(a) of the Labor Management Relations Act. In a subsequent ruling, the Court has further held that an implied no-strike clause will also support a *Boys Market* injunction. *Gateway Coal Co. v. United Mine Workers of America,* 414 U.S. 368 (1974). In *Gateway* the Court noted that "a contractual commitment to submit disagreements to final and binding arbitration gives rise to an implied obligation not to strike over such disputes." *Id.,* at 381. The Court further stated that "the agreement to arbitrate and the duty not to strike should be construed as having coterminous application." *Id.,* at 382.

Although *Boys Markets* is of relatively recent origin, there are a number of cases involving its application to fact situations similar to that before the Court.

It appears to the Court that while many of the decisions may be distinguishable on their precise facts, they do present two basically different jurisprudential views as to the proper construction and reach of *Boys Markets.*

On the one hand, there are a number of decisions which hold that a refusal of union members to cross a picket line established at their place of employment by another union is not enjoinable. The leading case representing that view is *Amstar Corp. v. Amalgamated Meat Cutters and Butcher Workmen of North America,* 468 F.2d 1372 (CA 5, 1972). Therein the Court stated:

> The case *sub judice* is entirely outside the scope of the exception to the Norris-LaGuardia Act delineated in *Boys Markets.* [Citations omitted] The strike by the Chalmette employees was not "over a grievance"

which the parties were contractually bound to arbitrate. Rather, the strike itself precipitated the dispute—the validity under the Union's no-strike obligation of the member-employees honoring the ILA picket line. Were we to hold that the legality of the very strike sought to be enjoined in the present situation constituted a sufficiently arbitrable underlying dispute for a *Boys Markets* injunction to issue, it is difficult to conceive of any strike which could not be so enjoined. The *Boys Markets* holding was a "narrow one," not intended to undermine the vitality of the anti-injunction provision of the Norris-LaGuardia Act. Indeed, the Supreme Court specifically stated that its decision did not mean "that injunctive relief is appropriate as a matter of course in every case of a strike over an arbitrable grievance." This appeal is such a case. The district court was without jurisdiction to enter the injunction. *Id.*, at pps. 1373-74.

The same theory was stated much more succinctly in *General Cable Corporation v. International Brotherhood of Electrical Workers, Local Union 1644*, 331 F.Supp. 478 (D.Md., 1971), wherein the Court stated:

> The only grievance between the Company and Local 1644 is the result of the strike and not the cause of the strike. It does not come within the narrow exception created by the rule in *Boys Market* to the applicability of the Norris-LaGuardia Act. *Id.*, at p. 482.

The same conclusion was reached in *Simplex Wire and Cable Co. v. Local 2208, International Brotherhood of Electrical Workers*, 314 F.Supp. 885 (D. N.H., 1970).

Although not directly in point, in that it does not involve a refusal to cross picket lines, the decision in

Parade Publications, Inc. v. Philadelphia Mailers Union No. 14, 459 F. 2d 369 (CA 3, 1972), warrants mention. Therein union defendants having a no-strike and arbitration clause in their contracts had engaged in a work stoppage in protest of the employer's alleged setting up of a new concern to which the work being performed by the union members would be diverted. In reversing a Section 301 injunction, the court stated:

> Parade's argument that the strike itself clearly created an arbitrable issue of whether the union had violated the general "no strike" clause does not require a different result for two reasons. First, it is apparent from the court's reference to "any dispute which underlies the alleged walkout" that it did not rest its decision to issue an injunction upon a finding that the strike itself created an issue which the parties have bound themselves to arbitrate. Second, this argument of Parade goes beyond anything decided in the *Boys Market* case. Indeed, if the Diversified situation caused the strike and does not present an issue which the parties have bound themselves to arbitrate, it would run contrary to the rationale of *Boys Market* to grant Parade an injunction. *Id.*, at p. 374.

The contrary point of view proceeds from a line of authority represented by *Monongahela Power Company v. Local No. 2332, International Brotherhood of Electrical Workers*, 484 F. 2d 1209 (CA 4, 1973). In that decision, although stating that:

> The anti-injunction provision of Norris-LaGuardia still retained much of its vitality after *Boys Markets*, however, as the Court specifically limited its holding—that injunctive relief against labor disputes may be available—to a narrow fact situation,

the court found that by virtue of the "extremely broad and encompassing language" of the express no strike-no lockout and grievance-arbitration clauses of the collective bargaining agreement "the facts of the instant case clearly bring it within the narrow *Boys Markets* exception". The Fourth Circuit again upheld a *Boys Markets* injunction in a picket line situation in *Pilot Freight Carriers v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America*, 497 F.2d 311 (1974). The decision therein was predicated upon the fact that the collective bargaining agreement, which contained an express no-strike clause and a broad arbitration clause, had a clause which granted the union the right to refuse to cross a primary picket line. The court found that a dispute existed as to whether the picket line was primary or secondary and that the "relationship between the no-strike clause and the clause allowing individual employees to refuse crossing a primary picket line" was an arbitrable matter within the sense of *Boys Markets*. In *NAPA Pittsburg, Inc. v. Automotive Chauffeurs, Parts and Garage Employees, Local Union 926*, ... F.2d ....., 87 LRRM 2044 (CA 3, 1974), the court was also presented with a collective bargaining agreement containing a clause granting employees the right to refuse to cross a primary picket line. The decision therein was *en banc*, with a 6-3 vote affirming the granting of a § 301 injunction. The majority distinguished the *Amstar* line of authority on the basis that "In none of the cited cases was there a contractual provision restricting the union's right to honor picket lines of other labor organizations", while the dissent took the view under the rationale of *Boys Markets* that an injunction should not be granted in the factual context presented. In *Barnard College v. Transportation Workers Union of America*, 372 F. Supp. 211 (S.D. N.Y., 1974), the court based its injunction upon a contractual

commitment to resolve "all differences" by arbitration with an obligation not to "call or countenance any form of strike", while in *Bethlehem Mines Corporation v. United Mine Workers of America*, a contract clause obliging the parties to arbitrate all differences under the contract and any differences "about matters not specifically mentioned in this agreement or . . . any local trouble of any kind . . . at the mine" was sufficient to support a *Boys Market* injunction.

The uncertain state of the law on the issue before the Court is clearly brought home by the fact that within one week of each other two district courts reached conflicting conclusions on essentially the same facts and law as were later presented to the Fourth Circuit Court of Appeals in *Pilot Freight*, supra. On March 25, 1974, Judge O'Kelley of the Northern District of Georgia entered a § 301 injunction, applying the same theory adopted by the Fourth Circuit in its later decision. *Pilot Freight Carriers, Inc. v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America*, 86 LRRM 2419. On April 1, Judge Stern of the New Jersey district denied an injunction sought on the same grounds as had been advanced in Georgia, adopting the view of *Boys Markets* contained in the *Amstar* line of authority. *Pilot Freight Carriers, Inc.* v. *Local 560, International Brotherhood of Teamsters*, 373 F. Supp. 19. Similarly, although the court sought to distinguish the ruling in the Maryland *General Cable* case, it appears to the Court that the decision in *General Cable Corporation v. International Brotherhood of Electrical Workers, Local Union 1798*, 333 F. Supp. 331 (W.D. Tenn., 1971), simply represents a different conclusion on basically the same facts in each case.

Having reviewed the considerations discussed in what this Court believes to be the two divergent lines of author-

ity, this Court is of the opinion that the conclusion of the *Amstar* case is the sounder view.

In this Court's opinion, there is a clear difference between a labor dispute which results from a work stoppage and a work stoppage which is the result of a labor dispute arising from conditions of employment. While *Boys Markets* teaches that the latter is enjoinable, the Court believes that an injunction as to the former cannot be reconciled with the express language of the Supreme Court in that decision. In this Court's opinion, the philosophy represented by the *Monongahela Power, NAPA,* and *Pilot Freight* decisions runs counter to the Supreme Court's admonition that the *Boys Markets* holding was a "narrow one", not making injunctive relief "appropriate as a matter of course in every case of a strike under an arbitrable grievance", and that the decision was not intended to "undermine the vitality of the Norris-LaGuardia action", but rather represented an accommodation of the literal terms of Section 4 of Norris-LaGuardia to the provisions of Section 301(a) of the Labor Management Relations Act and the judicial policies favoring arbitration of labor disputes. 398 U.S. 235, 250, 253-254. In this case, there was no dispute whatsoever between plaintiff and defendants until such time as the craft employees failed to report for work following posting of the Guild picket lines. It therefore follows that no injunction may issue herein against these defendants.

Although the Court's decision as expressed above is determinative of the plaintiff's motion, as previously stated, the Court intends to cover all issues presented in this proceeding. Consequently, assuming that this Court has too narrowly viewed *Boys Markets* and that the theory of the *Monongahela Power, NAPA* and *Pilot Freight* decisions applies, the Court will now consider the remaining issues. This is done so that in the event of an appeal,

should the Court of Appeals disagree with this Court's view of the law, it will not be necessary to remand the action for further findings.

In considering the remaining issues, which are matters of both fact and law, the burden of proving its case rests upon the plaintiff. An employer seeking an injunction has the burden of proving that he comes within the *Boys Markets* doctrine. He must provide the Court with an evidentiary basis for making the findings required by that case as a prerequisite to the issuance of an injunction. *Parade Publications, Inc. v. Philadelphia Mailers Union Local No. 14,* 459 F.2d 369, 373 (CA 3, 1972). While in a proceeding for preliminary injunction a plaintiff need not prove its case to the same degree as would be required at a trial upon the merits, the record must reflect sufficient evidence of the factors required to support a *Boys Markets* injunction to satisfy the "strong showing of probable success" test.

In order to satisfy its burden, plaintiff must demonstrate that the unions are in fact engaged in an unlawful work stoppage, that such work stoppage is over a grievance that the parties are contractually bound to arbitrate, and that the collective bargaining agreements contain no-strike clauses, express or implied, which afford a basis for an injunctive order. *Avco Corp. v. Local Union #787 of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America,* 459 F. 2d 968, 972 (CA 3, 1972).

The first issue is whether these defendants are now engaged in an unlawful work stoppage. If they are not, then no injunction could issue.

We must start with the premise that a person who refuses to cross a picket line of another union as a matter of

principle becomes a striker, but that one who refuses to do so by reason of physical fear does not act on principle and may not be considered a striker. *National Labor Relations Board v. Union Carbide Corporation*, 440 F. 2d 54 (CA 4, 1971). *See also, National Labor Relations Board v. Knight Morley Corp.*, 251 F. 2d 753 (CA 6, 1958). This principle has been codified in § 502 of the Labor Management Relations Act, 29 U.S.C. § 143, which provides:

> [N]or shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee be deemed a strike under this chapter.

This recognition of a right to refuse to work provides a limited exception to an express or implied no-strike obligation. *Gateway Coal Co. v. United Mine Workers of America*, 414 U.S. 368 (1974).

While the express terms of § 502 would appear to apply to occupational safety hazards, it has been construed as extending to potential labor violence. *Redwing Carrier, Inc.*, 130 N.L.R.B. 1208, enforced as modified, 325 F. 2d 1011 (CA D.C., 1963). Therefore, whether failure to report to work in the face of credible threats of violence be characterized as protected activity under § 502 or as not representing a breach of contract, the result is the same—there is no basis for an injunction mandating a return to work.

In this case there is a dispute between the parties as to whether the defendants have failed to report for work as a consequence of a bona fide fear for personal safety. This is a matter of fact which the Court must resolve.

The Court finds that the facts are not the same as to all defendants.

Approximately a week before the Guild went on strike, the possibility of that event was discussed at a Printers' union meeting, and the membership was advised that they would be obliged to continue working.

On the evening that the Guild strike vote was taken, the craft unions held a unity meeting at which the question of supporting the Guild strike was presented. All unions present, excepting the Pressmens and Mailers, voted to cross the picket lines and report for work if possible. The Pressmen and the Mailers abstained on the basis that they required instructions from their international unions.

Members of both the Printers and Stereotypers have attempted, either individually or collectively, to obtain entry into the Plain Dealer plant. The record reflects that in each instance they have been met with resistance and threats of violence. When a large body of Printers attempted to report on Sunday, November 3, they were met by an equally large body of strikers barring their way.

Plaintiff's Director of Labor Relations testified that he believed the threats to be idle ones, and there has been the strong intimation by plaintiff that the Sunday mass confrontation was a neatly arranged scenario. The members of the defendant unions who testified stated they fully believed the threats, and honestly believed that violence would have ensued had they attempted to pass those barring their way.

It has been said that:

> What constitutes unlawful intimidation depends on all the circumstances. Force threatened is the equivalent of force exercised. There may be unlawful intimidation without any direct threats or overt acts of violence. Words or acts which are calculated and intended to cause an ordinary person to fear an injury

to his person, business, or property are equivalent to threats. The number of pickets, their methods, their placards, and their circulars may constitute intimidation. A display of force without actual use thereof may be intimidation. 48 *Am. Jur. 2d, Labor and Labor Relations* § 1390.

In the context of discussing the provisions of § 502, the Supreme Court stated in *Gateway Coal* that there must be some objective evidence of an abnormally dangerous condition for work. 414 U.S. 368, 386. This Court is satisfied that the evidence of the threats and confrontations meets that standard. The Court does not believe that it was incumbent upon the craft employees to further prove the dangerous conditions by going forward in the face of the threats of violence, in order to establish the validity of such threats.

In the Court's opinion, the record is insufficient to support the conclusion that the Printers and Stereotypers have allied themselves with the Guild as a matter of principle. The evidence of their consistent avowed intent to work if possible cannot be disregarded in determining whether the unions are engaged in a concerted unlawful work stoppage.

As the Court cannot find that the Printers and Stereotypers are engaged in an unlawful work stoppage in violation of their contractual obligations, it necessarily follows that they could not be subjected to a mandatory order to discontinue such conduct.

However, as to the Pressmens and Mailers, there is no evidence that any of their members have attempted to report for work. There is likewise no evidence of the official position of the unions as regards the Guild strike. Consequently, it is just as reasonable to assume that the

failure of those unions to report for work is by virtue of sympathizing with the Guild, as it is out of fear of the Guild. Absent any objective evidence that justifies the failure of those unions to report for work, this Court must conclude that they may be considered as strikers.

Having determined that the Pressmens and Mailers could be found to be engaged in an unlawful work stoppage, it must then be determined whether such a stoppage is subject to being enjoined under the *Boys Markets* standards, for as is pointed out therein, not every strike is subject to being enjoined. That issue is controlled by the terms of the parties' collective bargaining agreements.

Consistent with the Court's decision to treat on all issues inherent in this case, the Court will also consider the matter of whether the Printers and Stereotypers contracts will support a *Boys Markets* injunction, notwithstanding the conclusion reached as to those unions' status as non-strikers.

The Court has examined the collective bargaining agreements of all defendant Unions. None of the said agreements contains an express no-strike clause comparable to those contained in the collective bargaining agreements in the cases previously considered herein in which mandatory orders were issued requiring the crossing of picket lines. Consequently, the obligation of these unions not to engage in work stoppages must be implied from the grievance-arbitration clauses of their contracts, and cannot exceed the scope of those clauses.

As to all the unions, plaintiff contends that "manning" provisions in each contract provide the basis for the finding of an arbitrable dispute, in that the work stoppages violate the unions' obligations thereunder. This Court does not agree with that position. The actual dispute here

is the right of the craft employees to refuse to cross the Guild's picket line. To characterize the arbitrable dispute in terms of the manning provisions would bootstrap all work stoppages into arbitrable grievances. There can be many reasons for a work stoppage, and it is the validity of these reasons which is the proper subject for arbitration if the contract so provides, not the failure to work itself.

The Court finds that the Printers and Mailers contracts have reasonably broad grievance and arbitration clauses, although there are perhaps some ambiguities within the terms of the clauses. Those contracts also contain clauses pertaining to the subject of "Picket Line". Bearing in mind that in *Gateway Coal*, a *Boys Markets* injunction action, the Supreme Court did reaffirm the federal policy favoring resolving doubts as to arbitrability in favor of arbitration, if this Court were to apply the *Monongahela Power, NAPA, Pilot Freight* standards the Court would conclude that an arbitrable grievance supportive of a § 301 injunction exists. However, by virtue of the absence of strong express no-strike clauses, the contracts would certainly be borderline situations.

As to the Stereotypers contract, while the grievance-arbitration clause is arguably broad, the Court finds no other contract provisions therein comparable to those which afforded the basis for the orders in the *Monongahela Power* line of decisions. Therefore, the failure to cross a picket line could present no arbitrable dispute under the contract, and hence no § 301 injunction could issue.

In the Court's opinion, the grievance-arbitration provisions of the Pressmens contract is of such a limited scope that it cannot be said to imply a no-strike obligation applicable to the facts of this case.

Finally, if this Court was of the opinion that the controlling law permitted the entry of an injunctive order, the Court, as dictated by both the Sixth Circuit Court of Appeals in the *North Avondale* decision and by the Supreme Court in *Boys Markets,* would have to take into account the general equitable considerations and the public interest as pertinent hereto. Injunction is an equitable remedy which should not be lightly indulged in, but used sparingly and only in a clear and plain case. 42 *Am. Jur. 2d, Injunction* §2.

Mr. Justice Black recognized that honoring a picket line has been a respected tradition within the labor movement:

> Section 7 of the Taft-Hartley Act, 29 USC § 157 recognizes a right of employees to work together in "concerted activities for their mutual aid and protection." One way some union men help others is to refrain from crossing picket lines. Habitual respect for union picket lines has long been the practice of union men. This practice has been a prized asset of the unions. The Taft-Hartley Act was designed to regulate and restrict the type of concerted activities in which employees could engage. But even that Act did not attempt to deprive unions of the advantage of a policy that required union men to respect picket lines. *National Labor Relations Board v. Rockaway News Supply Co.*, 345 U.S. 71, 81 (1953).

The Court can understand the emotional impact that attempts to cross a picket line might have in a community with a long history of strong unionism.

Throughout these proceedings defendants have emphasized the risk of violence on the picket lines. Although the Court has some reservations about the evidence of cer-

tain of the altercations and confrontations between the defendant unions and the pickets, the Court does believe that an attempt to forcibly cross the picket line does present a real potential for violence.

In cases involving vindication of fundamental constitutional rights, the courts have granted injunctions even though aware that their decisions might result in violence and personal injury. However, this Court believes that in cases seeking vindication of contractual rights, the courts should draw a careful balance between the need to protect a litigant's private interests and the potential for public disorder that such action might entail.

As the authority of the courts to order any picket line breached is of recent origin, this Court has little historical perspective to draw upon in determining whether an injunctive order would result in actual violence. However, the Court cannot ignore the fact that violence did occur at the Plain Dealer in 1971, when members of craft unions attempted to forcibly cross a Guild picket line established in an economic strike.

As the Court has stated that its conclusions on all issues will be expressed, it is this Court's opinion that the equitable considerations would be sufficient to preclude the entry of a mandatory injunction herein, had it been necessary to reach that issue.

Plaintiff's motion for preliminary injunction will be denied.

/s/ BEN C. GREEN
United States District Judge

APPENDIX B (Cont'd)

Order of the District Court

No. C74-1001

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

PLAIN DEALER PUBLISHING CO.
Plaintiff,

v.

CLEVELAND TYPOGRAPHICAL UNION NO. 53, *et al.*,
Defendants.

ORDER

(Filed November 8, 1974)

UPON CONSIDERATION of plaintiff's motion for preliminary injunction,

IT IS HEREBY ORDERED that the said motion is denied; see this Court's memorandum of even date. The Court's ruling is certified pursuant to 28 U.S.C. § 1292(b).

/s/ BEN C. GREEN
United States District Judge

APPENDIX C

Statutes Involved

Section 4 of the Norris-LaGuardia Act

29 U.S.C. § 104. Enumeration of specific acts not subject to restraining orders or injunctions

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following act:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising,

speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title.

Section 301 of the Labor Management Relations Act of 1947

29 U.S.C. § 185. Suits by and against labor organizations—Venue, amount, and citizenship

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

APPENDIX D

Collective Bargaining Agreement

1. Contract Between The Plain Dealer Publishing Co. and Typographical Union No. 53 (In Part)

ARTICLE I

Recognition and Jurisdiction

* * * * *

Section 3. The Union agrees, upon the request of the Employer, at all times to use all means within its power to provide a sufficient number of employes necessary to perform all work which is recognized by this agreement to be within the jurisdiction of the Union.

Section 4. All employees will work at any and all times where the needs of the Employer may require, provided, however, that nothing in this Section shall waive any of the provisions of this contract pertaining to hours, wages, call-back or overtime embodied in this contract.

* * * * *

ARTICLE VI

General Provisions

* * * * *

Section 6. No employe covered by this contract shall be required to cross a picket line established because of an authorized strike by any other subordinate Union of the International Typographical Union.

* * * * *

ARTICLE VII

Conciliation and Arbitration

Section 1. Witnesseth: That the parties hereto, being desirous of maintaining harmonious relations between employers and employes, hereby mutually agree to settle all differences that may arise, by conciliation, and if conciliation fails, by arbitration. This applies only to differences arising during the life of this contract, and not the renewal of this contract.

Section 2. A Joint Standing Committee shall be appointed, consisting of two representatives of the Employer and two representatives of the Union. These representatives shall be appointed by their respective organizations. All questions that may arise as to the construction to be placed on any part of this Agreement, and any controversy over discharge of help shall be referred to said committee.

Section 3. This contract alone shall govern relations between the parties on all subjects concerning which any provision is made in this contract, and any dispute involving any such subjects shall be determined in accordance with the conciliation provisions provided for herein.

Section 4. Should either party have a grievance, the same shall be presented in writing within forty-five (45) days to the Joint Standing Committee for conciliation; said committee shall meet to consider said grievance within five (5) days (two days in discharge appeals) after filing of same (such time may be extended by mutual agreement); if an understanding cannot be reached within ten (10) days after the grievance has been presented, then the settlement of said grievance shall be left to the Board of Arbitration. Provided that by mutual agreement the

presenting of said grievance to the Board of Arbitration can be extended not to exceed thirty (30) days.

* * * * *

Section 6 (a). The decision of a majority of this Board shall be final and binding upon all parties. If any controversy arises as to interpretation or enforcement of this Agreement, the conditions prevailing prior to the dispute shall be maintained until the controversy has been disposed of as provided herein; provided that in discharge cases any discharged employe shall have the right to appeal to the chapel the fairness of any reason given for his discharge.

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2. Contract Between The Plain Dealer Publishing Co. and Mailers' Union No. 12 (In Part)

ARTICLE I—*Recognition and Jurisdiction*

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Section 12. The Union agrees, upon the request of the Employers, at all times to use all means within its power to provide a sufficient number of employes necessary to perform all work within the jurisdiction of the Union.

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ARTICLE VII—*Conciliation and Arbitration*

Section 71. WITNESSETH: That the parties hereto, being desirous of maintaining harmonious relations between employers and employes, hereby mutually agree to settle all differences that may arise by conciliation, and if conciliation fails, by arbitration. This applies only to differences arising during the life of this contract, and not to the renewal of this contract.

Section 72. A Joint Standing Committee shall be appointed, consisting of two representatives of the Employer and two representatives of the Union. These representatives shall be appointed by their respective organizations. All questions that may arise as to the construction to be placed on any part of this Agreement, and any controversy over discharge of help shall be referred to said committee.

Section 73. This contract alone shall govern relations between the parties on all subjects concerning which any provision is made in this contract, and all disputes involving any such subjects shall be determined in accordance with the conciliation provisions provided for herein.

Section 74. Should either party have a grievance, the same shall be presented in writing within forty-five (45) days to the Joint Standing Committee for conciliation; said committee shall meet to consider said grievance within five (5) days after filing of same; if an understanding cannot be reached within ten (10) days after the grievance has been presented, then the settlement of said grievance shall be left to the Board of Arbitration.

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Section 76 (a). The decision of a majority of this Board shall be final and binding upon all parties. If any controversy arises as to interpretation or enforcement of this Agreement, the conditions prevailing prior to the dispute shall be maintained until the controversy has been disposed of as provided herein; provided that in discharge cases, any discharged employe shall have the right to appeal to the chapel the fairness of any reason given for his discharge.

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ARTICLE VIII—*General Provisions*

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Section 82. No employee covered by this contract shall be required to cross a picket line established because of an authorized strike by any other subordinate union of the International Typographical Union.

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3. Contract Between The Plain Dealer Publishing Co. and Cleveland Newspaper Printing Pressmen's Union No. 5 (In Part)

ARTICLE III

Foremen, Their Authority and Hiring

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Section 38 ( ). The Employers desire to have a reliable source for obtaining their pressmen employees and the Union represents that it has available for employment persons with the necessary experience and qualifications to perform work of the type and character covered by this agreement in accordance with the terms thereof and hereby agree to supply such competent pressmen.

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ARTICLE X

Conciliation and Arbitration

Section 101. In the event of any difference or dispute arising as to the interpretation or the operation of this Agreement which cannot be settled between the Employer or Employers in question and the employee or employees, such differences or disputes shall be submitted to a Joint Standing Committee hereby created.

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Section 104. * * * In the event the Joint Standing Committee, after making an earnest effort to reach agreement, fails to agree upon a settlement, then either party, within the next succeeding fifteen (15) days, may serve upon the other party a written "notice of intention to submit the issue to arbitration", provided, however, that if there is no Union meeting held within such fifteen (15) day period, the Union may serve such written notice within seven (7) days after the first Union meeting held following the expiration of such fifteen (15) day period, but in no event more than ninety (90) days from the expiration of such fifteen (15) day period. Within fifteen (15) days from the notice of intention, the dispute shall proceed to consideration and determination before an Arbitration Board, unless the parties mutually agree, in writing, to extend the time.

* * * * *

Section 106. The determination of the Arbitration Board, as agreed to by the majority thereof, as well as any decision of the Joint Standing Committee settling the grievance before going to arbitration, shall be final and binding.

Section 107. It is understood that during the pendence of the foregoing procedure and arbitration, work shall proceed without interruption.

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4. Contract Between The Plain Dealer Publishing Co. and Cleveland Stereotypers Union No. 22 (In Part)

ARTICLE III—*Foremen and Their Authority*

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Section 36 (a). The Publisher desires to have a reliable source for obtaining stereotype employees and the Union represents that it has available for employment persons with the necessary experience and qualifications to perform work of the type and character covered by this agreement in accordance with the terms thereof and hereby agree to supply such competent stereotypers.

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ARTICLE X—*Arbitration*

Section 101. Any dispute or complaint arising out of the interpretation or application of the terms of this agreement remaining unsettled after having been subjected to the grievance procedure set forth above, may be submitted to arbitration as provided for herein.

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Section 104. The decision of the arbitrator shall be final and binding on all the parties, the Publisher, the Union and the employees.

Section 105. During the pendency of the foregoing procedure and arbitration, including specifically the grievance procedure, work as scheduled by the Publisher shall proceed without interruption; moreover, it is expressly understood that the arbitrator may in his discretion determine upon a remedy which includes making whole either party or employees for any inconvenience or disadvantage suffered by reason of the action, practice, or conduct complained of in the grievance, as well as awards to the parties or employees calculated to discourage such improper conduct, action or practice.

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